

PATENT COOPERATION TREATY

From the
INTERNATIONAL SEARCHING AUTHORITY

PCT

To:

see form PCT/ISA/220

WRITTEN OPINION OF THE INTERNATIONAL SEARCHING AUTHORITY (PCT Rule 43bis.1)

Date of mailing
(day/month/year) see form PCT/ISA/210 (second sheet)

Applicant's or agent's file reference
see form PCT/ISA/220

FOR FURTHER ACTION
See paragraph 2 below

International application No.
PCT/EP2004/007666

International filing date (day/month/year)
08.07.2004

Priority date (day/month/year)
11.07.2003

International Patent Classification (IPC) or both national classification and IPC
A61K9/14

Applicant
GLAXO GROUP LIMITED

1. This opinion contains indications relating to the following items:

- ☒ Box No. I Basis of the opinion
- ☒ Box No. II Priority
- ☒ Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
- ☐ Box No. IV Lack of unity of invention
- ☒ Box No. V Reasoned statement under Rule 43bis.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
- ☐ Box No. VI Certain documents cited
- ☐ Box No. VII Certain defects in the international application
- ☐ Box No. VIII Certain observations on the international application

2. FURTHER ACTION

If a demand for international preliminary examination is made, this opinion will usually be considered to be a written opinion of the International Preliminary Examining Authority ("IPEA"). However, this does not apply where the applicant chooses an Authority other than this one to be the IPEA and the chosen IPEA has notified the International Bureau under Rule 66.1b/s(b) that written opinions of this International Searching Authority will not be so considered.

If this opinion is, as provided above, considered to be a written opinion of the IPEA, the applicant is invited to submit to the IPEA a written reply together, where appropriate, with amendments, before the expiration of three months from the date of mailing of Form PCT/ISA/220 or before the expiration of 22 months from the priority date, whichever expires later.

For further options, see Form PCT/ISA/220.

3. For further details, see notes to Form PCT/ISA/220.

Name and mailing address of the ISA:



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**WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING AUTHORITY**

International application No.
PCT/EP2004/007666

Box No. I Basis of the opinion

1. With regard to the **language**, this opinion has been established on the basis of the international application in the language in which it was filed, unless otherwise indicated under this item.
☐ This opinion has been established on the basis of a translation from the original language into the following language , which is the language of a translation furnished for the purposes of international search (under Rules 12.3 and 23.1(b)).
2. With regard to any **nucleotide and/or amino acid sequence** disclosed in the international application and necessary to the claimed invention, this opinion has been established on the basis of:
 - a. type of material:
☐ a sequence listing
☐ table(s) related to the sequence listing
 - b. format of material:
☐ in written format
☐ in computer readable form
 - c. time of filing/furnishing:
☐ contained in the international application as filed.
☐ filed together with the international application in computer readable form.
☐ furnished subsequently to this Authority for the purposes of search.
3. ☐ In addition, in the case that more than one version or copy of a sequence listing and/or table relating thereto has been filed or furnished, the required statements that the information in the subsequent or additional copies is identical to that in the application as filed or does not go beyond the application as filed, as appropriate, were furnished.
4. Additional comments:

**WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING AUTHORITY**

International application No.
PCT/EP2004/007666

Box No. II Priority

1. ☒ The following document has not been furnished:

- ☒ copy of the earlier application whose priority has been claimed (Rule 43*bis*.1 and 66.7(a)).
- ☐ translation of the earlier application whose priority has been claimed (Rule 43*bis*.1 and 66.7(b)).

Consequently it has not been possible to consider the validity of the priority claim. This opinion has nevertheless been established on the assumption that the relevant date is the claimed priority date.

2. ☐ This opinion has been established as if no priority had been claimed due to the fact that the priority claim has been found invalid (Rules 43*bis*.1 and 64.1). Thus for the purposes of this opinion, the international filing date indicated above is considered to be the relevant date.
3. Additional observations, if necessary:

**WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING AUTHORITY**

International application No.
PCT/EP2004/007666

Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability

The questions whether the claimed invention appears to be novel, to involve an inventive step (to be non obvious), or to be industrially applicable have not been examined in respect of:

- ☐ the entire international application,
- ☒ claims Nos. 18, with respect to industrial applicability

because:

- ☒ the said international application, or the said claims Nos. 18, with respect to industrial applicability relate to the following subject matter which does not require an international preliminary examination (*specify*):

see separate sheet

- ☐ the description, claims or drawings (*indicate particular elements below*) or said claims Nos. are so unclear that no meaningful opinion could be formed (*specify*):
- ☐ the claims, or said claims Nos. are so inadequately supported by the description that no meaningful opinion could be formed.
- ☒ no international search report has been established for the whole application or for said claims Nos. 18, with respect to industrial applicability
- ☐ the nucleotide and/or amino acid sequence listing does not comply with the standard provided for in Annex C of the Administrative Instructions in that:
 - the written form ☐ has not been furnished
 - ☐ does not comply with the standard
 - the computer readable form ☐ has not been furnished
 - ☐ does not comply with the standard
- ☐ the tables related to the nucleotide and/or amino acid sequence listing, if in computer readable form only, do not comply with the technical requirements provided for in Annex C-bis of the Administrative Instructions.
- ☐ See separate sheet for further details

**WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING AUTHORITY**

International application No.
PCT/EP2004/007666

**Box No. V Reasoned statement under Rule 43*bis*.1(a)(i) with regard to novelty, inventive step or
Industrial applicability; citations and explanations supporting such statement**

1. Statement

Novelty (N)	Yes: Claims	
	No: Claims	1-19
Inventive step (IS)	Yes: Claims	
	No: Claims	1-19
Industrial applicability (IA)	Yes: Claims	1,17,19
	No: Claims	

2. Citations and explanations

see separate sheet

Re Item II

Priority

Earlier WO application WO 03/088943 D1 published on 30 October 2003 claims the priority date of 13 April 2002. It discloses (see page 2, lines 22-28 and page 7, line 34 - page 8, line 4) a pharmaceutical composition comprising an active ingredient (similar to those of the present application) and a carrier (lactose). Magnesium stearate, which improves the stability performance of such compositions, may be further added.

The application GB0316341 (date of filing 11 July 2003) to which the priority claim of the present application is directed, is therefore not the application disclosing for the first time some of the subject-matter of the present EP application. As some of the subject-matter as described above was disclosed in a still earlier application D1 originating from the same applicant (GLAXO GROUP LTD), the application GB0316341 is in fact not the "first application" in the sense of Article 8 PCT. Therefore, the priority claim is invalid for the subject-matter already disclosed in the still earlier application D1 and document D1 will be considered as forming part of the prior art.

Re Item III

Non-establishment of opinion with regard to novelty, inventive step and industrial applicability

For the assessment of the present claim 18 on the question whether it is industrially applicable, no unified criteria exist in the PCT Contracting States. The patentability can also be dependent upon the formulation of the claim. The EPO, for example, does not recognize as industrially applicable the subject-matter of claims to the use of a compound in medical treatment, but may allow, however, claims to a known compound for first use in medical treatment and the use of such a compound for the manufacture of a medicament for a new medical treatment.

Re Item V

Reasoned statement with regard to novelty, inventive step and industrial applicability; citations and explanations supporting such statement

1. Cited Documents

The following documents are referred to in this communication:

- D1: WO 03/088943 A (BULSARA PALLAV ARVIND ; GLAXO GROUP LTD (GB); ROCHE TREVOR CHARLES (GB) 30 October 2003 (2003-10-30)
D2: WO 00/28979 A (SKYEPHARMA AG ; MUELLER WALZ RUDI (DE); KELLER MANFRED (DE)) 25 May 2000 (2000-05-25)

2. Novelty

D1 discloses (see page 2, lines 22-28 and page 7, line 34 - page 8, line 4) a pharmaceutical composition comprising an active ingredient (similar to those of the present application) and a carrier (lactose). Magnesium stearate, which improves the stability performance of such compositions, may be further added. The subject-matter of claims 1-19 is therefore not new (Article 33 (2) PCT).

D2 discloses (see examples 1-3) the use of 0,1-2% w/w magnesium stearate for stabilising a dry powder formulation for inhalation which comprises an active substance (formoterol) and a carrier (lactose). The subject-matter of claims 1-7,9-12,14-19 is therefore not new (Article 33 (2) PCT).

3. Inventive Step

Claims 1-19 not being new are also not inventive (Article 33(3) PCT).

4. Industrial applicability

Claim 18 relates to subject-matter considered by this Authority to be covered by the provisions of Rule 67.1(iv) PCT. Consequently, no opinion will be formulated with respect to the industrial applicability of the subject-matter of this claim (Article 34(4)(a)(i) PCT).

Claims 1-17,19 satisfy the criterion of industrial applicability set forth in Article 33(4) PCT.